



27 MAY 2008

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In re Application of	:	
KEIM et al.	:	DECISION
Application No.: 10/531,159	:	
PCT No.: PCT/US03/32887	:	
Int. Filing Date: 14 October 2003	:	
Priority Date: 11 October 2002	:	
Attorney's Docket No.: 112624.00029	:	
For: MOLECULAR SIGNATURE AND ASSAY	:	
FOR FLUOROQUINOLINE RESISTANCE IN	:	
BACILLUS ANTHRACIS	:	

This decision is in response to applicants' petition under 37 CFR 1.137(b) filed on 08 January 2008.

BACKGROUND

On 14 October 2003, applicants filed international application PCT/US03/32887, which designated the U.S. and claimed a priority date of 11 October 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 02 December 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 11 April 2005 (29 January 2005 being a Saturday).

On 12 April 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and a declaration of inventors.

On 09 June 2005, applicants filed a petition under 37 CFR 1.10(d) requesting that the papers filed in the submission for entry into the national stage be accorded a date of 11 April 2005 rather than 12 April 2005.

On 27 September 2005, a decision was mailed dismissing applicants' petition under 37 CFR 1.10(d) because applicant had failed to provide a showing, corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the

correspondence in the "Express Mail Post Office to Addressee" service of the USPS provide evidence from the USPS, which established to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

On 19 October 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America as per the decision mailed 27 September 2005.

On 03 March 2006, applicants filed a renewed petition under 37 CFR 1.10(d).

On 21 June 2006, a decision was mailed dismissing applicants' renewed petition under 37CFR 1.10(d) because applicant had failed to provide a showing, corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS provide evidence from the USPS, which established to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

On 21 August 2006, applicant submitted a renewed petition under 37 CFR 1.10(d). Applicants' request that the Office of the Director invoke its supervisory authority under 37 CFR 1.181 was construed as a request for supervisory review.

On 06 December 2006, a decision signed by the Supervisory Legal Examiner in the Office of PCT Legal Administration was mailed dismissing applicant's petition under 37 CFR 1.10(d) without prejudice. Specifically, it was noted that applicant still had failed to provide a showing, corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS provide evidence from the USPS, which established to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

On 06 February 2007, applicant submitted a renewed petition under 37 CFR 1.10(d). Applicants' request that the Office of the Director invoke its supervisory authority was construed as a request for final agency review.

On 05 October 2007, a decision signed by the Director of the Office of PCT Legal Administration was mailed denying applicants' petition under 37 CFR 1.10(d). Specifically, it was noted that applicant still had failed to provide a showing, corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS provide

evidence from the USPS, which established to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day.

On 08 January 2008, applicants filed the instant petition under 37 CFR 1.137(b).

DISCUSSION

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), applicant submitted the basic national fee on 12 April 2005.

As to item (2), applicant submitted the petition fee on 08 January 2008.

As to item (3), the required statement has been provided.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

Declaration of Inventors

The declaration of inventors filed 12 April 2005 is not in compliance with 37 CFR 1.497(a)-(b). The declaration executes an incorrect application; it executes PCT/US03/32287 rather than PCT/US03/32887. Additionally, the declaration filed 12 April 2005 is an improper composite declaration, consisting of one of Page 1, one of Page 2, and two of Page 3 of 3. Each inventor must be presented with a complete declaration which lists all of the inventors, and the signature of each inventor must appear on at least one complete declaration. Multiple complete declarations may be submitted, but it is not permissible to combine pages of separate documents.

Further, the declaration filed 12 April 2005 is not sufficient because it contains non-initialed alterations (the address of Talima Pearson and the name of Joseph D. Busch). 37 CFR 1.52(c). "The Office will not consider whether noninitialed and or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration." MPEP § 605.04(a). Item I.

CONCLUSION

The petition under 37 CFR 1.137(b) is **GRANTED** for the reasons set forth above.

Applicants are required to file a declaration in compliance with 37 CFR 1.497(a)-(b) and 37 CFR 1.52(c) within TWO (2) MONTHS from the date of mailing of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Failure to timely file a proper response to this decision in a timely manner will result in abandonment of the application with regards to national stage prosecution in the United States.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web or if mailed should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

/Daniel Stemmer/

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